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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,792

04/16/2004

John Geoffrey Chan

9215

9078

27752 7590 01/25/2007

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EXAMINER

KARLS, SHAY LYNN

ART UNIT

PAPER NUMBER

1744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/825,792

Applicant(s)

CHAN ET AL.

Examiner

Shay L. Karls

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of elastomeric elements on the top face (claim 39) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 33 recites the limitation "the surface of the massaging plate" in line 7. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 12-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Maser et al. (USPN 4827551).**

Maser teaches a toothbrush comprising an elongated handle (1) and a head (3). The elongated head comprises a longitudinal axis, a top face and bottom face. The top face comprises a brushing surface (15, figure 4) and the bottom surface comprises a massaging surface (14, figure 4). While the head is circular, if looked at in cross-section, it would show that half of the head has bristles and the other half has projections. The semi-circular half with the bristles would be considered the top face and the other semi-circular half would be the bottom

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face. The brushing surface comprises a generally circular shaped collection of bristle tufts. The massaging surface comprises a plurality of projections oriented in staggered rows (figure 4).

With regards to claims 13 and 26, the projections are generally conical nubs (figure 1).

With regards to claims 14, 15, 25 and 30, the projections are in rows transverse to the longitudinal axis of the brush (figure 3) or parallel to the longitudinal axis of the brush (figures 2 and 4).

With regards to claim 16, the projections cover a substantial portion of the bottom face.

With regards to claim 17, the projections are uniform in shape (figures 1-4).

With regards to claims 18 and 27, the projections are formed from an elastic material (rubber, col. 2, lines 50-56).

With regards to claim 19, the projections are nubs (figure 1).

With regards to claim 20, the projections are conical (figure 1).

With regards to claims 21-22 and 28, the head further comprises ridge like elements (figures 2-4) that are arcuate in shape (figures 2-4).

With regards to claim 23, the handle comprises a motor (2).

With regards to claims 24, 29, 31 and 32, the motor is connected to the brushing surface and the massaging surface (col. 2, lines 49-56; figure 4) causing the massaging surface and brushing surface to pulsate.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12-22, 25-28 and 30, 33-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Psiharis (USPN 2253210) in view of Maser (USPN 4827551).

Psiharis teaches a toothbrush comprising an elongated handle (10) and a head. The elongated head comprises a longitudinal axis, a top face and bottom face. The top face comprises a brushing surface (14, figure 1) and the bottom surface comprises a massaging surface (figure 4 and 5). The brushing surface comprises generally circular tufts. The massaging surface comprises a plurality of projections oriented in rows (figures 4 and 5).

With regards to claims 13 and 26, the projections are generally conical nubs (30).

With regards to claims 14, 15, 25 and 30, the projections are in rows transverse to the longitudinal axis of the brush (figure 5) or parallel to the longitudinal axis of the brush (figure 4).

With regards to claim 16, the projections cover a substantial portion of the bottom face.

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With regards to claim 17, the projections are uniform in shape (figures 4-5).

With regards to claim 19, the projections are nubs (30; figure 4).

With regards to claim 20, the projections are conical (30).

With regards to claims 21-22 and 28, the head further comprises ridge like elements (figure 5) that are arcuate in shape (they have a curved top surface).

Regarding claim 33, Psiharis teaches a toothbrush comprising an elongated handle (10) and a head. The elongated head comprises a longitudinal axis, a top face and bottom face. The top face comprises a brushing surface (14, figure 1) and the bottom surface comprises a massaging plate (figure 4 and 5). The brushing surface comprises a collection of bristle tufts. A surface of the massaging pate comprises a plurality of projections oriented in rows (figures 4 and 5).

With regards to claim 34, the massaging plate is secured to the bottom face of the toothbrush head (figure 3 and 7). See figure below.

With regards to claim 35, the massaging plate has a top surface that is generally coplanar with the bottom face of the toothbrush head (figure 8, 9 and 10).

With regards to claim 37, the massaging plate is elongate (figure 4 and 5).

With regards to claim 39, the top face comprises a plurality of resilient elements. See figure below.

With regards to claim 40, the projections are conical nubs (30; figure 4).

With regards to claim 41, the bottom face is generally planar (figure 4 and 5).

With regards to claim 42, the top face is generally planar (figure 3 and 7).

With regards to claim 43, a sidewall exists between the brushing surface and the surface

of the massaging plate (not labeled but shown on figure 5 as element 28).

Psiharis teaches all the essential elements of the claimed invention however fails to teach that the plurality of projections are oriented in staggered rows (claims 12, 25, 30 and 33). The reference teaches that the massaging plate and projections are made from a resilient material however fails to teach using an elastomeric material (claims 18, 27, 36, 38 and 39). Additionally, the reference fails to teach that the toothbrush head is made from a polymer (claim 36).

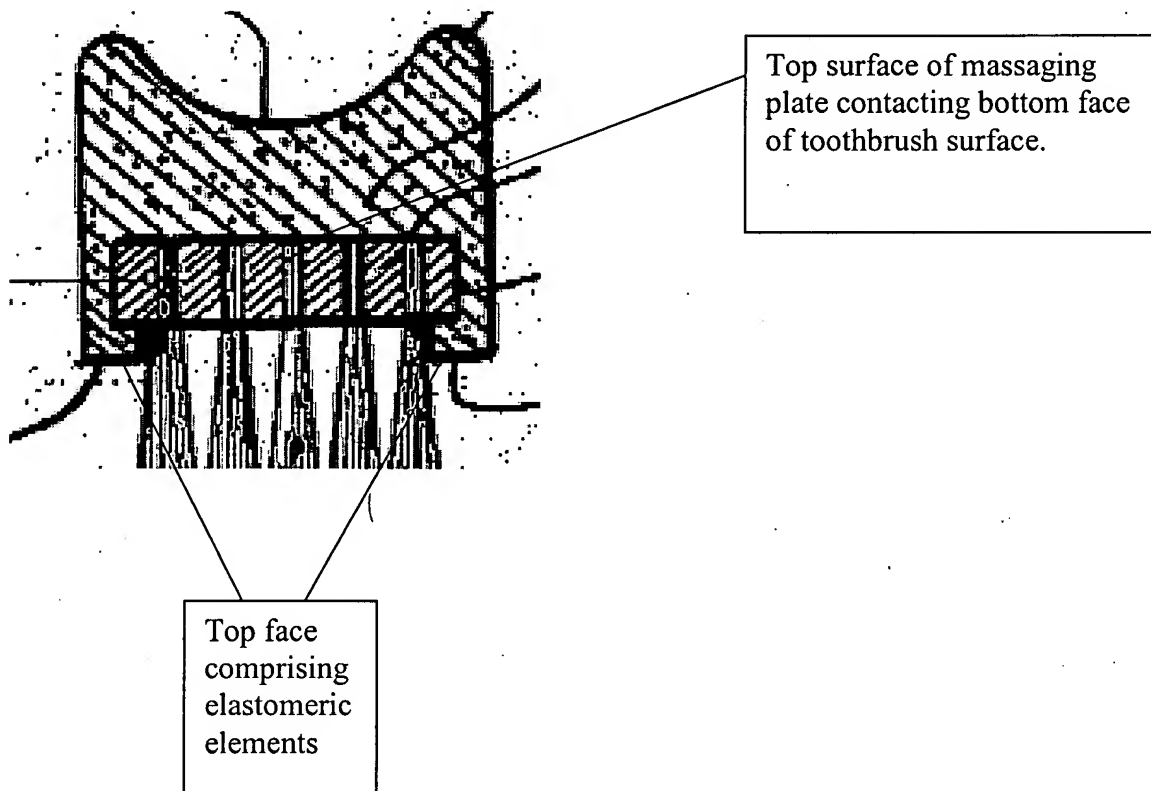
Maser teaches a toothbrush head with staggering rows of projections (figure 1). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to stagger the rows of projections because Applicant has not disclosed that staggering rows provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the projections taught by Psiharis or the claimed staggering as taught by Maser because both projections perform the same function of massaging a user's gums equally well. Therefore, it would have been obvious to one of ordinary skill in the art to modify Psiharis with Maser to obtain the invention as specified in claims 18, 25, 30 and 33.

Regarding the material used for the massaging plate, the projections and the toothbrush head, Psiharis fails to teach using an elastomeric material for the massaging plate and projections and fails to teach using a polymer such as polypropylene, polystyrene, polyethylene, etc. for the toothbrush head. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an elastomeric material for the massaging plate and projections as well as use a polymer such a polypropylene, polystyrene, polyethylene, etc., for the toothbrush



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head since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416.



### ***Response to Arguments***

Applicant's arguments, filed 11/13/06, with respect to Psiharis, Pfleger and Himmel have been fully considered and are persuasive. The rejections of Psiharis, Pfleger and Himmel have been withdrawn since they clearly do not teach staggering rows.

Applicant's arguments filed 11/13/06, with respect to Maser have been fully considered but they are not persuasive.

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The applicant argues that Maser teaches an embodiment where the brushing and massaging surfaces touch either other, while the present invention's massaging surface and brushing surface do not touch. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., brush and massaging surfaces touching) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicant added new claims 33-43 to the application. These claims caused the examiner to present a new rejection, Psiharis in view Maser.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shay L. Karls whose telephone number is 571-272-1268. The examiner can normally be reached on 7:00-4:30 M-Th, alternating F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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